

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA ex rel.
JAMES R. BERKLEY,

Plaintiff,
vs.

OCEAN STATE, LLC,
NEW HARBOR CAPITAL FUND LP, NEW
HARBOR CAPITAL FUND II LP,
NEW HARBOR CAPITAL MANAGEMENT
LP, BLUEPRINT TEST PREPARATION,
LLC, FYZICAL ACQUISITION
HOLDINGS, LLC,

Defendants.

C.A. No. 1:20-cv-00538-JJM-PAS

**DECLARATION ERIC E. RENNER IN SUPPORT OF
RELATOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Eric E. Renner, do hereby declare the following under penalty of perjury:

1. I am an attorney at the law firm of Duffy & Sweeney, Ltd., attorneys of record for plaintiff-relator, James R. Berkley (“Relator”). I am an attorney in good standing, admitted to practice in the state courts of Rhode Island, among other places.
2. I submit this affidavit in support of Relator’s motion for partial summary judgment (“Motion”).
3. I make this declaration based on my personal knowledge, including my review of pertinent documents, and without intention, authorization, or effect of waiving or compromising any privilege or immunity held by my clients. The documents referred to herein and in the other papers submitted herewith, denoted “Ex. #”, are itemized herein and annexed hereto. In accordance with LR Cv 56(b), only the relevant portions of documents are included in the exhibits.

Markings have been inserted on some of the documents annexed hereto to indicate pertinent material. Capitalized terms have the same meaning set forth in the Motion and in Relator's Statement of Undisputed Material Facts in Support of the Motion, unless otherwise defined herein.

Exhibits Attached

4. Attached hereto as Ex. 1 is a true and correct copy of the NHC Fund I Limited Partnership Agreement produced by Defendants in discovery, filed under seal.
5. Attached hereto as Ex. 2 is a true and correct copy of the NHC Fund I organization chart produced by Defendants in discovery, filed under seal.
6. Attached hereto as Ex. 3 is a true and correct copy of the NHC Fund II Limited Partnership Agreement produced by Defendants in discovery, filed under seal.
7. Attached hereto as Ex. 4 is a true and correct copy of the NHC Fund II organization chart produced by Defendants in discovery, filed under seal.
8. Attached hereto as Ex. 5 is a true and correct copy of an Ocean State Urgent Care document produced by Defendants in discovery, filed under seal.
9. Attached hereto as Ex. 6 is a true and correct copy of a Securities Purchase Agreement document produced by Defendants in discovery, filed under seal.
10. Attached hereto as Ex. 7 is a true and correct copy of a Professional Services Agreement document produced by Defendants in discovery, filed under seal.
11. Attached hereto as Ex. 8 is a true and correct copy of excerpts of Ocean State's Supplemental Answers to Relator's Interrogatories, filed under seal.
12. Attached hereto as Ex. 9 is a true and correct copy of excerpts of an Amended and Restated LLC Agreement for Ocean State produced by Defendants in discovery, filed under seal.

13. Attached hereto as Ex. 10 is a true and correct copy of excerpts of an Amended and Restated LLC Agreement for Ocean State Buyer produced by Defendants in discovery, filed under seal.

14. Attached hereto as Ex. 11 is a true and correct copy of excerpts of a Second Amended and Restated LLC Agreement for Ocean State Holdings produced by Defendants in discovery, filed under seal.

15. Attached hereto as Ex. 12 is a true and correct copy of Ocean State's PPP application form produced by Defendants in discovery, filed under seal.

16. Attached hereto as Ex. 13 is a true and correct copy of excerpts of the deposition of Mark Morgan.

17. Attached hereto as Ex. 14 is a true and correct copy of excerpts of the deposition of Edward Lhee.

18. Attached hereto as Ex. 15 is a true and correct copy of excerpts of the deposition of Tom Formolo.

19. Attached hereto as Ex. 16 is a true and correct copy of excerpts of the deposition of John Roselli.

20. Attached hereto as Ex. 17 is a true and correct copy of excerpts of a Private Placement Memorandum for New Harbor Capital Fund III, LP produced by Defendants in discovery, filed under seal.

21. Attached hereto as Ex. 18 is a true and correct copy of a New Harbor Capital Year End Letter – 2019 produced by Defendants in discovery, filed under seal.

22. Attached hereto as Ex. 19 is a true and correct copy of a New Harbor Capital Year End Letter – 2020 produced by Defendants in discovery, filed under seal.

23. Attached hereto as Ex. 20 is a true and correct copy of an April 16, 2020 email chain produced by Defendants in discovery, filed under seal.

24. Attached hereto as Ex. 21 is a true and correct copy of a Fyzical Holdings corporate legal structure document produced by Defendants in discovery, filed under seal.

25. Attached hereto as Ex. 22 is a true and correct copy of a Professional Services Agreement document produced by Defendants in discovery, filed under seal.

26. Attached hereto as Ex. 23 is a true and correct copy of a Project Fyzical document produced by Defendants in discovery, filed under seal.

27. Attached hereto as Ex. 24 is a true and correct copy of a Fyzical Tax IDs document produced by Defendants in discovery, filed under seal.

28. Attached hereto as Ex. 25 is a true and correct copy of Fyzical Holdings' PPP application form produced by Defendants in discovery, filed under seal.

29. Attached hereto as Ex. 26 is a true and correct copy of a May 14, 2020 email chain produced by Defendants in discovery, filed under seal.

30. Attached hereto as Ex. 27 is a true and correct copy of excerpts of Fyzical Holdings' Supplemental Answers to Relator's Interrogatories, filed under seal.

31. Attached hereto as Ex. 28 is a true and correct copy of excerpts of a Second Amended and Restated LLC Agreement for Fyzical Holdings produced by Defendants in discovery, filed under seal.

32. Attached hereto as Ex. 29 is a true and correct copy of a March 27, 2020 email chain produced by Defendants in discovery, filed under seal.

33. Attached hereto as Ex. 30 is a true and correct copy of a March 29, 2020 email chain produced by Defendants in discovery, filed under seal.

34. Attached hereto as Ex. 31 is a true and correct copy of a April 3, 2020 email chain produced by Defendants in discovery, filed under seal.

35. Attached hereto as Ex. 32 is a true and correct copy of a April 10, 2020 email chain produced by Defendants in discovery, filed under seal.

36. Attached hereto as Ex. 33 is a true and correct copy of the Declaration of Jason C. Frulla submitted in this matter.

37. Attached hereto as Ex. 34 is a true and correct copy of an Ocean State Member Consent document produced by Defendants in discovery, filed under seal.

38. Attached hereto as Ex. 35 is a true and correct copy of a May 4, 2020 email chain produced by Defendants in discovery, filed under seal.

39. Attached hereto as Ex. 36 is a true and correct copy of a May 6, 2020 email chain produced by Defendants in discovery, filed under seal.

40. Attached hereto as Ex. 37 is a true and correct copy of a May 7, 2020 email chain and draft Ocean State Business Case memo produced by Defendants in discovery, filed under seal.

41. Attached hereto as Ex. 38 is a true and correct copy of a May 12, 2020 email chain and draft Ocean State Business Case memo produced by Defendants in discovery, filed under seal.

42. Attached hereto as Ex. 39 is a true and correct copy of a May 14, 2020 email chain produced by Defendants in discovery, filed under seal.

43. Attached hereto as Ex. 40 is a true and correct copy of an Ocean State Board Consent document produced by Defendants in discovery, filed under seal.

44. Attached hereto as Ex. 41 is a true and correct copy of a July 24, 2020 email chain produced by Defendants in discovery, filed under seal.

45. Attached hereto as Ex. 42 is a true and correct copy of Ocean State's PPP forgiveness application form produced by the SBA, filed under seal.

46. Attached hereto as Ex. 43 is a true and correct copy of a 2019 Ocean State Organizational Chart produced by Defendants in discovery, filed under seal.

47. Attached hereto as Ex. 44 is a true and correct copy of a Blueprint Entity Chart produced by Defendants in discovery, filed under seal.

48. Attached hereto as Ex. 45 is a true and correct copy of Blueprint's PPP application form produced by Defendants in discovery, filed under seal.

49. Attached hereto as Ex. 46 is a true and correct copy of a Blueprint / Next Step Post-Closing Structure document produced by Defendants in discovery, filed under seal.

50. Attached hereto as Ex. 47 is a true and correct copy of excerpts of Ocean State's Second Supplemental Answers to Relator's Interrogatories, filed under seal.

51. Attached hereto as Ex. 48 is a true and correct copy of an Ocean State Payroll Summary document produced by Defendants in discovery, filed under seal.

52. Attached hereto as Ex. 49 is a true and correct copy of an Ocean State document entitled "PRF how funds spent by site" document produced by Defendants in discovery, filed under seal.

53. Attached hereto as Ex. 50 is a true and correct copy of an Ocean State document entitled "Ocean State Health care Information for SBA loan" document produced by Defendants in discovery, filed under seal.

54. Attached hereto as Ex. 51 is a true and correct copy of an Ocean State document entitled "POSEIDON Operating Model-DRAFT 2 (06 05 20)" document produced by Defendants in discovery, filed under seal.

55. Attached hereto as Ex. 52 is a true and correct copy of an Ocean State document entitled “OSUC COMBINED May 2020” document produced by Defendants in discovery, filed under seal.

56. Attached hereto as Ex. 53 is a true and correct copy of excerpts of a Fifth Amendment to Loan Agreement produced by Defendants in discovery, filed under seal.

57. Attached hereto as Ex. 54 is a true and correct copy of excerpts of a Fourth Amendment to Loan Agreement produced by Defendants in discovery, filed under seal.

58. Attached hereto as Ex. 55 is a true and correct copy of excerpts of a Second Amended and Restate Guarantee Agreement produced by Defendants in discovery, filed under seal.

59. Attached hereto as Ex. 56 is a true and correct copy of excerpts of a Loan Agreement produced by Defendants in discovery, filed under seal.

60. Attached hereto as Ex. 57 is a true and correct copy of excerpts of NHC Fund I’s Second Supplemental Answers to Relator’s Interrogatories, filed under seal.

61. Attached hereto as Ex. 58 is a true and correct copy of excerpts of the deposition of Sarah Charette.

62. Attached hereto as Ex. 59 is a true and correct copy of excerpts of the deposition of John Pircon.

63. Attached hereto as Ex. 60 is a true and correct copy of an April 3, 2020 letter from Deerpath produced by Defendants in discovery, filed under seal.

64. Attached hereto as Ex. 61 is a true and correct copy of excerpts of a Loan Agreement produced by Defendants in discovery, filed under seal.

65. Attached hereto as Ex. 52 is a true and correct copy of a Fyzical Qualifications and Needs memo produced by Defendants in discovery, filed under seal.

66. Attached hereto as Ex. 63 is a true and correct copy of excerpts of the deposition of Eric Thompson.

67. Attached hereto as Ex. 64 is a true and correct copy of a May 13, 2020 email produced by Defendants in discovery, filed under seal.

68. Attached hereto as Ex. 65 is a true and correct copy of a Fyzical Holdings Board Consent document produced by Defendants in discovery, filed under seal.

69. Attached hereto as Ex. 66 is a true and correct copy of Fyzical Holdings' PPP forgiveness application form produced by Defendants in discovery, filed under seal.

70. Attached hereto as Ex. 67 is a true and correct copy excerpts of financial statements for Fyzical Holdings produced by Defendants in discovery, filed under seal.

71. Attached hereto as Ex. 68 is a true and correct copy of excerpts of a Fyzical Franchise Disclosure Document produced by Defendants in discovery, filed under seal.

72. Attached hereto as Ex. 69 is a true and correct copy of excerpts of Fyzical Holdings' Second Supplemental Answers to Relator's Interrogatories, filed under seal.

73. Attached hereto as Ex. 70 is a true and correct copy of an April 4, 2020 guidance from the SBA.

74. Attached hereto as Ex. 71 is a true and correct copy of excerpts of the SBA Franchise Directory.

75. Attached hereto as Ex. 72 is a true and correct copy of a DOJ Press Release, Settlement Agreement and Complaint in the Victory Automotive Action.

I declare under pains and penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Eric Renner

Eric E. Renner (#7481)
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*Attorneys for Plaintiff-Relator,
United States of America ex rel James R. Berkley*

Date: January 6, 2025

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2025, a true copy of the foregoing document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and copies will be mailed to those indicated as non-registered participants.

/s/ Eric E. Renner